

# **FRENCHMAN BAY REGIONAL SHELLFISH CONSERVATION INTERLOCAL MANAGEMENT AGREEMENT**

**For the Towns of  
Ellsworth, Franklin, Hancock, Lamoine, Sorrento, Sullivan and  
Trenton**

**As adopted in 2010**

**Mission Statement:** These towns will act collaboratively as stewards to preserve, protect, manage and enhance the shellfish resources and ecological well being of the Greater Frenchman Bay Region and to insure a sustainable harvest of shellfish and opportunity for those who make their living on the tide.

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## **I. TITLE**

This Interlocal Agreement shall be known, and may be cited as, the "FRENCHMAN BAY REGIONAL SHELLFISH CONSERVATION INTERLOCAL MANAGEMENT AGREEMENT."

Mission Statement: These towns will act collaboratively as stewards to preserve, protect, manage and enhance the shellfish resources and ecological well being of the Greater Frenchman Bay Region and to insure a sustainable harvest of shellfish and opportunity for those who make their living on the tide.

## **II. FINDING OF FACT**

There is a need for the City of Ellsworth and Towns of Franklin, Hancock, Lamoine, Sorrento, Sullivan and Trenton to enter into a regional shellfish ordinance to protect the resource and provide local input to augment State authority where it concerns the sustainable management and harvest of shellfish in those municipalities.

## **III. LEGAL AUTHORITY**

Legal authority to enter this Interlocal Agreement is provided by the "Interlocal Cooperation Act", Title 30-A, Sections 2201 through 2207, 1987. Legal authority for the associated communities to enact the proposed Ordinance is referenced within the proposed Ordinance.

## **IV. CONSIDERATION CLAUSE**

This agreement may be entered into by the City of Ellsworth and Towns of Franklin, Hancock, Lamoine, Sorrento, Sullivan and Trenton by approval of the City Council or town meeting in the municipality in consideration of the importance of and need for clam management measures to preserve this natural resource for current and future diggers, both commercial and recreational, and the need for a cooperative effort between the towns to effectively and successfully continue to implement the Management Plans and Ordinance developed by the ~~Frenchman Bay Regional~~ Frenchman Bay Regional Shellfish Conservation Committee.

The goals and objectives of this agreement are to manage the resource through licensing, limitation on the number of diggers and quantities harvested, limiting size of clams taken, limiting time and areas where digging is permitted, opening and keeping the region open for harvesting, seeding programs, and by rewarding conservation work.

## **V. VALIDITY AND SEVERABILITY**

If any section, subsection, sentence or part of this Agreement is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Agreement.

### **PART 1- Purpose:**

The purpose of this Agreement is to define the common and individual responsibilities of the towns that choose to participate in this agreement.

### **PART 2 - Definitions (as used in this Agreement):**

- Administrative Municipality - is that municipality selected to perform the duties of administration associated with implementing this Agreement and Ordinance.
- Agreement - is used to reference this Agreement. See Section I. Title above.
- Ordinance - is used to reference the Frenchman Bay Regional Shellfish Conservation Ordinance.

### **PART 3 - Administration:**

The Administrative Municipality shall be selected by the Municipal Joint Board, subject to agreement by that municipality's Board of Selectmen or Council. The municipal official of the Administrative Municipality designated to administer this Agreement shall attend all Municipal Joint Board meetings and shall receive direction from the Municipal Joint Board. To offset the additional expense that will be incurred by the Administrative Municipality, said municipality shall retain ten percent (10%) of all fees and fines collected under the Ordinance for use by said municipality.

Administration of this Agreement is the responsibility of the Administrative Municipality. Administrative duties that are the responsibility of each member municipality shall include: sale of licenses following procedures defined by the Ordinance, forwarding of funds collected under the Ordinance to the Administrative Municipality, or by such mechanisms as may be agreed to by the town administrators.

3.1 - Municipal Joint Board: Each of the participating towns shall appoint one municipal officer (Selectmen/Council member) as a member of a Municipal Joint Board to act as the town's representative for all issues concerning this agreement. Each of the participating towns may also appoint one individual as an alternate member of the Municipal Joint Board to represent the respective municipal officer during an absence at a Municipal Joint Board meeting. The alternate must be a resident of the participating town, does not need to be a municipal officer (Selectmen) of the participating town, and must not have held a commercial shellfish license during the last three (3) years previous to the appointment. The person so appointed shall serve at the pleasure of the body that made the appointment and may be replaced thereby.

#### 3.2 - Meetings:

- 👉 A chairman of the Municipal Joint Board shall be elected at the first meeting of each calendar year by the regular members of the Municipal Joint Board
- 👉 Regular meetings shall be held on a schedule decided annually by the Joint Board.
- 👉 Special meetings may be called at the request of a member of the Municipal Joint Board or a member of the Frenchman Bay Regional Shellfish Conservation Committee through the Chairman of the Municipal Joint Board.
- 👉 A quorum shall consist of a majority of the Board.
- 👉 Any ~~vote action~~ must ~~be approved by a majority of Municipal Joint Board members present and voting receive 4 affirmative votes in order to be enacted.~~
- 👉 Notice of all meetings of the Municipal Joint Board shall be given to each member of the Board, shall be published in accordance with town policies, and shall be open to the public.
- 👉 Minutes shall be recorded and made available for public review.
- 👉 Executive sessions, when necessary, shall be conducted according to State law and in accordance with the Administrative Municipality's policies.

3.3 - Frenchman Bay Regional Shellfish Conservation Committee: As stated in the Ordinance, a Frenchman Bay Regional Shellfish Conservation Committee shall be appointed by the towns and shall act in an advisory capacity to the Municipal Joint Board to recommend conservation actions to be taken by the Municipal Joint Board.

3.4 - Powers: The Municipal Joint Board is authorized to: set the number of shellfish licenses to be issued; establish license fees; open and close the flats, set times of day and days of the week when digging is allowed; set permitted quantities that may be harvested; and, to take such other actions as required to implement the intent of this Agreement as authorized by each municipality's Board of Selectmen/Council and approved by the Department of Marine Resources. The Municipal Joint Board shall also have the

responsibility and authority to take actions as required and allowed by law to ensure that legal, financial and personnel issues are appropriately and correctly resolved.

#### **PART 4- Finance:**


All expenses incurred by this Agreement are to be met by license fees, fines and/or other funds collected under the provisions of the Ordinance and this Agreement. Given that implementation of this Agreement and Ordinance is financially and recreationally beneficial to the participating towns, the use of funding provided by the towns is authorized.


4.1 - Apportionment: If additional funds are required to successfully implement this Agreement, or to enforce the Ordinance, such funds shall be appropriated by the participating communities. Any such action will require the approval of the legislative body of the municipality raising the funds.


4.2 - In-Kind Contributions: All in-kind contributions shall be treated as common property held by the participating communities and shall be managed by the Administrative Municipality.

##### 4.3 - Financial Procedures:

 Annually a budget will be prepared by the finance department of the Administrative Municipality with input from the Joint Board and Conservation committee.

 All ~~funds-funds and fines~~ collected by the participating municipalities shall be held in a "Shellfish Ordinance Account(s)" by the Treasurer of the Administrative Municipality. Disbursement of account funds is restricted to costs directly incurred by implementation of this Agreement and/or Ordinance. Annually or on request, financial reports shall be provided to each participating municipality by the Administrative Municipality. Such reports shall include information concerning any jointly held properties.

 The fiscal year shall be the same as the Administrative Municipality's, or as set by the Municipal Joint Board.

 I had a note here: Intent that this program is paid for equally amongst the participating municipalities??

4.4 - Starting Fund: A starting fund is required. The same formula that is developed to cover annual operating costs in excess of revenues will be used to make up the starting fund.

#### **Part 5 - Property**

Acquired properties include a boat, a truck, and gear used by the Warden. These properties are held by the Administrative Municipality as defined in the Agreement.

5.1 - Title: Title to all acquired property shall be held by the Administrative Municipality for the benefit of all participating municipalities.

5.2 - Possession and Maintenance: Possession and maintenance of any acquired property are the responsibility of the Administrative Municipality

#### **Part 6 - Personnel**

A Shellfish Conservation Warden or Wardens shall be employed to enforce the Ordinance and perform such other duties as specified in the Warden's job description. The Warden shall be assisted as the need dictates by all other municipal law enforcement agencies as well as other County and State law enforcement agencies as appropriate.

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6.1- Employing Municipality: The employing municipality shall be the Administrative Municipality and its personnel policy shall apply.

6.2 - Job Title: The job title for the Shellfish Warden shall be "Frenchman Bay Regional Shellfish Conservation Warden".

## **Part 7 - Remedies**

This section identifies potential problem areas and suggests procedures for resolution.

7.1 - Breach of Agreement: Actions that can be considered a breach of this Agreement include, but are not limited to: failure to conform to the specifications of this Agreement and failure to conform to the specifications of the Ordinance.

7.2 - Disagreements: The first level for resolution of disagreements between the parties of this Agreement shall be an appeal to the Municipal Joint Board. The decision of the Municipal Joint Board may be appealed to the Superior Court within thirty (30) days after the Municipal Joint Board ruling. The Municipal Joint Board shall review the problem with the objective of developing an action plan to resolve the problem. Mediation or arbitration will be considered whenever appropriate.

7.3 - Withdrawal: Any party may withdraw from this Agreement subject to the following:

- a. Notice of intent to withdraw shall be given to the Municipal Joint Board at least sixty (60) days prior to withdrawal;
- b. Any payments due during the notice period shall be paid to the Treasurer of the Administrative Municipality;
- c. Upon the effective date the withdrawing party shall lose all rights and benefits derived from this Agreement and to any funds previously contributed;
- d. In the event the Administrative Municipality withdraws, one of the remaining members shall assume those duties. The process for selecting an Administrative Municipality as outlined in the Agreement shall be followed. All records and titles held by the withdrawing Administrative Municipality shall be turned over to the new Administrative Municipality.
- e. In the event that this Agreement is terminated for any reason, all outstanding liabilities shall be allocated in accordance with this Agreement, and this agreement shall survive for the purpose of enforcing the rights among the parties.
- f. In the event that this Agreement is terminated all remaining assests will be divided between the member community.

## **PART 8 - Adoption, Amendment**

8.1 - Adoption: This agreement shall not take effect until it has been reviewed by the Department of Marine Resources, approved by the legislative bodies of the parties to the agreement (if they choose), and filed with the clerks of the parties and with the Secretary of State. A failure of any individual town to approve this Agreement or the Ordinance will not invalidate the Agreement or Ordinance for those towns that do choose to approve.

8.2 - Duration: This agreement shall continue for a period of five years and may be extended annually by the Joint Board. The Agreement may be terminated by a majority of member municipalities.

8.3 - Review by Regional Planning Commission: This agreement is to be reviewed as required by the Regional Planning Commission.

8.4 – Amendment: This Agreement may be amended after proposed changes have been reviewed by the Department of Marine Resources by a majority vote of the Municipal Joint Board and approved by the legislative bodies of the parties to the agreement (if they choose). [Note: Ellsworth’s charter requires Council action.](#)

8.5 - New Parties to Agreement: Municipalities may be admitted as parties to the Agreement by a majority vote of the Municipal Joint Board and upon approval by the legislative body of the new party to the agreement.

#### **Part 9 - Execution**

WHEREAS: In consideration of all of the above, and IN WITNESS WHEREOF, the parties have by their duly authorized officers caused this Agreement to be executed in all parts this **day and time to be determined.**